PREVENTION OF SEXUAL HARRASSMENT AND NO FEAR ACT 2002 TRAINING

Regional EEO Office
MCI-W and MARFORPAC
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WELCOME

- Welcome to the **Sexual Harassment Prevention and No Fear Act** online learning program.
- Sexual harassment is a form of sex discrimination that violates Title VII of the 1964 Civil Rights Act as amended in 1972.
- Sexual harassment consists of unwanted, unwelcome sexual advances or sexual conduct in the workplace that has the effect of unreasonably interfering with a person's work performance. This type of behavior can create an intimidating or hostile work environment.
- The goal of eliminating sexual harassment in the workplace must begin with prevention. As Marine Corps employees we have a responsibility to prevent sexual harassment from occurring. To accomplish this goal the online Sexual Harassment Prevention training will:

Continued……

- Increase your awareness, and
- Provide you with the skills and motivation needed to address issues of sexual harassment and provide information about No Fear Act of 2002.
- **Course Completion**

  Once you have completed this online course, please print and give a copy of the certificate to your supervisor to be forwarded to the EEO Office.
  To successfully complete the course, you must:

  - **Read the information presented on each screen**
  - **Check your comprehension of the material by participating in all learning activities, such as open-ended questions and other interactive exercises**
  - **Answer all review questions and use the feedback provided to increase your understanding**

Agenda

- Identification
- Avenues for Employees
- Explanation of Avenues
- Agency Process
- Confidentiality (When possible)
- Resolution Options

Why are we here?

- Equal Employmnet Opportunity Commission (EEOC) established minimum standards and guidelines for agency use in developing anti-harassment policy and complaint procedure should contain, at a minimum, the following elements:
  - **A clear explanation of prohibited conduct;**
  - **Assurance that employees who make claims of harassment or provide information related to such claims will be protected against retaliation;**
  - **A clearly described complaint process that provides accessible avenues for complainants;**
  - **Assurance that employer will protect the confidentiality of the individuals bringing harassment claims to the extent possible;**
  - **A complaint process that provides a prompt, thorough, and impartial investigation; and**
  - **Assurance that the employer will take immediate and appropriate corrective action when it determines that harassment has occurred.**
  - **And to discuss SECNAV Inst. 5300.26D**

What is SECNAV Inst.5300-26D?

- This instruction was released on 3 January 2006 to provide a comprehensive Department of the Navy (DON) policy for all military and civilian personnel on the identification, prevention, and elimination of sexual harassment and to establish regulation to enforce that policy.

SECNAV INST 5300.26D- DON's Prevention of sexual Harassment

- This instruction applies to all DON personnel, specifically: all active-duty military personnel, both Regular and Reserve; all DON civilians including non-appropriated fund employees; midshipman of the Naval Academy and the Reserve Officer Training Corps; and Reserve personnel when performing active or inactive duty for training, or engaging in any activity directly related to the performance of a Department of Defense (DOD) reserve duty or function.

To Find a Copy:
http://doni.daps.dla.mil/allinstructions.aspx

THE LAW

- Civil Rights Act of 1964, requires All personnel actions, affecting employees or applicants for (Federal) employment…Shall be free from any discrimination based on race, color, religion, sex or national origin.

Rehabilitation Act of 1973 and the ADA

- No personnel actions may be made which are based on real, perceived or a history of disability.
- Reasonable Accommodation is required for qualified employees with disabilities.
- The Underlined Terminology is critical!!

Age Discrimination in Employment Act of 1967

- "All personnel actions affecting employees or applicants for (Federal) employment, who are at least 40 years of age . . . Shall be made free from any discrimination based on age."

Unlawful Basis of Discrimination

- In Summary discrimination is prohibited based on the following basis:
- Age (over 40)
- Sex
- Race
- Religion
- National Origin
- Disability
- Color
- Reprisal

SEXUAL HARASSMENT

LET US FOCUS ON PREVENTION
OF
SEXUAL HARASSMNET

ACCOUNTABILITY

- A. Sexual harassment is prohibited.
- B. No individual in the DON shall:

  1. Commit sexual harassment as defined in enclosure (1) of SECNAV Inst 5300.26D;

  2. **Take reprisal action against a person who provides information on an incident of alleged sexual harassment**;

  3. Knowingly makes a false accusation of sexual harassment; or

  4. While in supervisory or Command position, condone or ignore sexual harassment of which he or she has knowledge or has reason to have knowledge.

SEXUAL HARASSMENT

Sexual harassment is a form of sex discrimination that involves unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

Involves a person's job, pay or career:

- Basis for employment decision
- Interferes with performance or creates an intimidating, hostile or offensive work environment.

MUST MEET THREE CRITERIA

- Must be unwelcome
- Sexual in nature
- Occur in or impact on the work environment.

Prevention of Sexual Harassment

- Prevention is the best tool to eliminate sexual harassment in the workplace.
- Employers are encouraged to take steps necessary to prevent sexual harassment from occurring.
- They should clearly communicate to employees that sexual harassment will not be tolerated.
- They can do so by providing sexual harassment training to their employees and by establishing an effective complaint or grievance process; taking immediate and appropriate action when an employee complains.

Reprisal Action - Unlawful

- It is also unlawful to retaliate against an individual for opposing employment practices that discriminate based on sex or for filing a discrimination charge, testifying or participating in any way in an investigation, proceeding, or litigation under Title VII.

- Prohibited by Law and Regulation

Sexual Harassment

- Sexual harassment can occur in a variety of circumstances, including but not limited to the following:
  - The victim as well as the harasser may be a woman or a man. The victim does not have to be of the opposite sex.
  - The harasser can be the victim's supervisor, an agent of the employer, a supervisor in another area, a co-worker, or a non-employee.
  - The victim does not have to be the person harassed but could be anyone affected by the offensive conduct.
  - Unlawful sexual harassment may occur without economic injury to or discharge of the victim.
  - The harasser's conduct must be unwelcome.
  - Source: http://www.de2.psu.edu/harassment/legal/

Types of Sexual Harassment
Quid Pro Quo and Hostile Work Environment

- **Quid Pro Quo**
- **Quid pro quo sexual harassment occurs when an individual's submission to or rejection of sexual advances or conduct of a sexual nature is used as the basis for employment decisions affecting the individual or the individual's submission to such conduct is made a term or condition of employment.**
- **It is sufficient to show a threat of economic loss to prove quid pro quo sexual harassment.**
- **A single sexual advance may constitute harassment if it is linked to the granting or denial of employment benefits.**
- **Courts have held employers strictly liable for quid pro quo sexual harassment initiated by supervisory employees.**
- **A subordinate who submits and then changes her or his mind and refuses can still bring quid pro quo sexual harassment charges.**

- **Source: http://www.de2.psu.edu/harassment/legal/**

Hostile Work Environment Harassment

- **Hostile environment sexual harassment** occurs when unwelcome sexual conduct unreasonably interferes with an individual's job performance or creates a hostile, intimidating or offensive work environment even though the harassment may not result in tangible or economic job consequences, that is, the person may not lose pay or a promotion. Employers, supervisors, coworkers, customers, or clients can create a hostile work environment.

- **Hostile environment sexual harassment might include**:

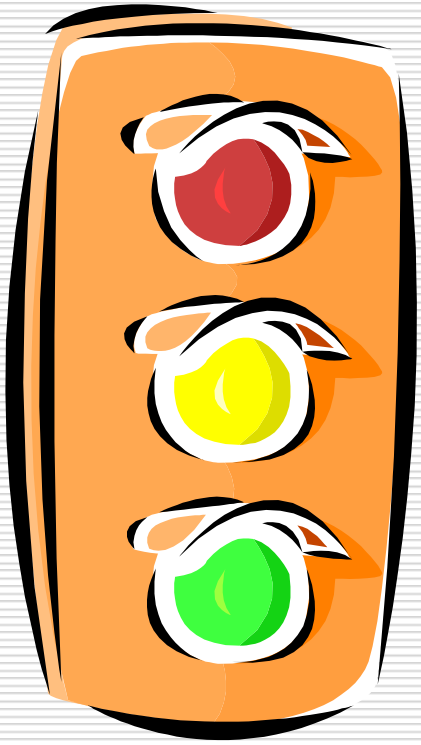
  - repeated requests for sexual favors
  - demeaning sexual inquiries and vulgarities
  - offensive language
  - other verbal or physical conduct of sexual or degrading nature
  - sexually offensive, explicit or sexist signs, cartoons, calendars, literature or photographs displayed in plain view
  - offensive and vulgar graffiti

Source: http://www.de2.psu.edu/harassment/legal/

Behavioral Zones

- Department of the Navy has developed three behavioral zones for training purposes to categorize some the behaviors you may encounter in the workplace.

BEHAVIORAL ZONES

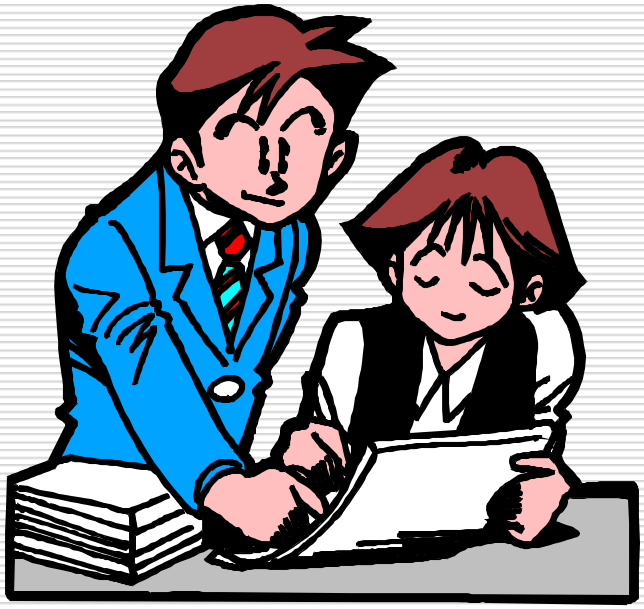


- RED
- YELLOW
- GREEN

GREEN ZONE BEHAVIOR

Acceptable not Sexual Harassment

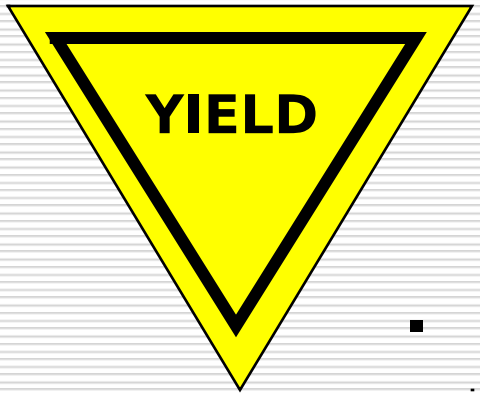
- Performance counseling
- Polite touching e.g. on the elbow
- Social interaction
- Showing concern
- Encouragement
- Polite compliment
- Friendly conversation



YELLOW ZONE BEHAVIOR

Use Caution

- Violating personal “Space”
- Whistling (at someone)
- Questions about personal life
- Posters/calendars
- Off-color jokes
- Leering and staring
- Repeated requests for dates
- Foul language
- Unwanted correspondence/E-mails
- Suggestive touching, sitting or gesturing.



IF YELLOW ZONE BEHAVIOR IS TOLD IT IS NOT WELCOME AND REPEATED, IT BECOMES SEXUAL HARASSMENT PER DON REGULATION

RED ZONE

"STOP" Don't do it. Always Considered Sexual Harassment

- Sexual favors in return for employment rewards
- Threats
- Sexually explicit (Porn) pictures displayed/E-mails
- Using status to require dates
- Criminal conduct-Sexual Assault

Determining Liability for Sexual Harassment

- Is there an effective Sexual Harassment policy in place?
- When the employer learned or should have known, of the Sexual Harassment, did they take prompt, effective action, reasonably calculated to end the harassment?

Confidentiality

- All incidents shall be resolved promptly and with sensitivity. Confidentiality will be maintained to the extent possible. For civilian employees, confidentiality is guaranteed during the informal stage of a discrimination complaint, if requested.
- Feedback will be provided to all affected individuals consistent with the requirements of the Privacy Act, Freedom of Information Act, and other pertinent laws, regulations and negotiated agreements.

Liability

- There are two conditions that determine liability for employers in cases of hostile environment sexual harassment:
- The employer knew or should have known about the harassment, and
- The employer failed to take appropriate corrective action.
- An employer can be held liable for the creation of a hostile environment by a supervisor, by non-supervisory personnel, or by the acts of the employer's customers or independent contractors if the employer has knowledge of such harassment and fails to correct it.

Source: http://www.de2.psu.edu/harassment/legal/

Reporting Sexual Harassment

- Each organization is required to have posted on their bulletin boards, the EEO poster regarding the reporting of Sexual Harassment and discrimination based on race, color, national origin, sex, age (over 40), disability, religion and reprisal.

- Communicate Commanding General/Officer's Policy Statement.

- If you have any questions, call the POC on the poster or 760-725-9810/4301 or use the POC listing at the end of this training module.

REPORTING - THE EMPLOYEE'S OPTIONS

- **Do you know how and where to report sexual harassment?**

  Chain Of Command
  Base Inspector
  EEO Office – (760-725-9810/4301) or use the POC List at the end of this module)
  HRO

- **Management Inquiry (Supports EEOC Model EEO Program, SECNAV Inst. 5300.26D and Title 10 Section 1561 Requirements)**

- **File an EEO complaint (45 calendar days limit to file/contact applies)**

- **Use of DON's Informal Resolution System**

- **Alternate Dispute Resolution (ADR)**

- **Title 10 Section 1561**

  When you report it……

- **Per EEOC Model EEO Program, SECNAV INSTR 5300.26D and Title 10 Section 1561, the Agency Will:**
  - Conduct an inquiry – Can be informal or formal
  - Why? To take "Necessary, Immediate, and Appropriate" corrective action
  - Best Practice - This may reduce or relieve agency liability

Management Inquiry/Agency Investigation

(This is not an option)

Per SECNAV Inst 5300.26D – All reported incidents of Sexual Harassment shall be investigated and resolved at the lowest appropriate level.

Option 1

EEO Process

Option 1 - EEO PROCESS

- If you choose the EEO process, the EEO complaint based on sexual harassment* complaint MUST be filed within **45 calendar days** of the alleged act occurred, the effective date of an alleged discriminatory personnel action, or the date that the aggrieved person knew or reasonably should have known that it occurred.

- * Or other basis –Race, Color, National Origin, Disability, Religion, Age (Over 40) and Reprisal.

PROCESSING INDIVIDUAL EEO/DISCRIMINATION COMPLAINT

Three Stages in the Administrative Process

Counseling/Informal

Formal/Investigation

Final Agency Decision With or Without Hearing

After Exhausting Admin Process You May File
An Appeal to EEOC or Federal Court

Informal Stage

- **<u>EEO Counselor will</u>:**
  - Provide Rights and Responsibilities in writing*
  - Define Issue(s), Basis and Relief
  - Notify the Management Official
  - Identify and interview people involved
  - Collect and review documents
  - Offer Alternate Dispute Resolution (ADR)
  - If not resolved, issue notice of Final Interview Notice
  - Prepare Counselor's Report

The Complainant may remain anonymous and have a right to representative of their choosing

Formal Stage

- Must file a formal complaint within fifteen calendar days of receiving the Final Interview Notice
- All Formal complaints must be sent to the MCI-W, Regional EEO Office, Camp Pendleton for processing
- Based on the formal complaint and the Counselor's Report, the Agency is required to Accept, Partially accept or Dismiss an EEO complaint
- If accepted - Initiate the Investigative process – Request DOD Investigations and Resolution Division, Sacramento to assign an Investigator
- You will Receive a copy of the Investigative Report with a notice to request a Final Decision with a hearing or without a hearing.
- If dismissed – you may file an appeal with the Equal Employment Opportunity Commission (EEOC)

Final Agency Decision (FAD)

- **Upon receiving the Investigative Report, the complainant may request the following:**
  - **SECNAV Decision with a Hearing – The EEOC-LA District Office will take over the EEO complaint**

  OR

  - **SECNAV Decision without a Hearing - NAVOECMA Navy Office of EEO Complaints Management and Adjudication will issue a Final Decision based on the record.**

Option 2

Department of the Navy Informal Resolution System

Option – 2 Department Of The Navy's Informal Resolution System (IRS)

If you choose DON's IRS – the Resolution Options are:

- **Direct Approach – Request/Demand the behavior to stop**
- **Informal Third Party – Request an informal third party to inform the alleged harasser to stop the behavior**
- **Request Training Information Resources**

Option 3

Alternate Dispute Resolution (ADR)

Option - 3 Alternate Dispute Resolution (ADR)

- What is ADR? ADR is the intervention into a dispute or negotiation of an acceptable, impartial and neutral third party who has no decision-making authority. The objective of this intervention is to assist the parties in reaching an acceptable resolution of issues in dispute voluntarily.
- To request Mediation/Conciliation – please your HRO or EEO Office.

MEDIATION/CONCILLIATION

- Confidential
- Best option for all DISPUTES!
- Minimum participants
  Complaint/Representative
  Management/Representative
  Mediator/Conciliator
  Union Representative (When applicable)
- Saves money
- Win-Win Situation
- Call Your HRO or EEO Office for more info

Your Actions……

If An Employee Notifies You Of An Allegation Of Discrimination (Including SH*), You Must

- Refer the employee to the EEO officials
- Keep notes
- Notify the EEO Office immediately
- Follow-up

*SH-Sexual Harassment

WHERE CAN YOU GET ADVICE?

- **Shipmate, Fellow Marine, or Co-Worker**
- **Chaplain**
- **Supervisor**
- **Legal Officer**
- **Equal Opportunity Officer**
- **Equal Opportunity Advisor (Military)**
- **Human Resources Director**
- **EEO Office**
- **DON Counseling and Advice Line**

  (800) 253-0931 Overseas Call Collect (703) 614-2735

How Can You Prevent Sexual Harassment

- You set the tone.
- Lead by Example.
- Keep your Eyes and Ears open.
- **Refuse to accept even Yellow Zone Behavior.**
- Demand mature behavior.
- Ensure you receive EEO Education & Training.
- Be aware of the outlets for reporting.
- Co-operate.

Finally ……If you are a Supervisor

Acting on Reports of Sexual Harassment

- Ensure Your Employees are advised of EEO rights (Refer the employee to EEO Office)
- Consult Human Resources Office (HRO)
- Seek Counsel
- Appropriately, investigate all allegations
- Take Prompt, appropriate and effective remedial action. (Varies with circumstances and investigative findings)
- Communicate with the Complainant
- Follow Up

Are you ready to take the QUIZ?

1. Sexual Harassment is:
    a. Bad Behavior
    b. Accepted as normal behavior where I work
    c. Is a form of sex discrimination that is sexual in nature
    d. Objectionable, sexually related misconduct.

2. There are two forms of sexual harassment and they are;
    a. Quid Pro Quo and Hostile Work Environment
    b. Verbal and Behavior
    c. Individual and Group

Correct Answer

- **Question 1 = c**

  c. Is a form of sex discrimination that is sexual in nature

- **Question 2 = a**

  a. Quid Pro Quo and Hostile Work Environment

Are you ready to take the QUIZ?

3. What is “Quid Pro Quo” sexual harassment?
    a. Confrontation
    b. “Something for something” expression
    c. Individual and Group

4. Sexual Harassment: *(May have more than one correct answer)*
    a. Happens at work place
    b. Unwelcome
    c. Sexual in Nature
    d. Creates hostile work environments
    e. All of the above

Correct Answer

- **Question 3 = b**

  b. “Something for something” expression

- **Question 4 = e**

  e. All of the above

Are you ready to take the QUIZ?

5. The Department of the Navy Policy on Sexual Harassment is:
    a. SECNAV 12300
    b. SECNAV Instruction 5300.26B
    c. SECNAV Instruction 5300.26D

6. What are “Behavioral Zones’?
    a. Based on Bad Behaviors
    b. “Traffic Light Symbols: Red, Yellow and Green”
    c. Based on Good Behaviors

Correct Answer

- **Question 5 = c**

  c. SECNAV Instruction 5300.26D

- **Question 6 = b**

  b. “Traffic Light Symbols: Red, Yellow and Green”

Are you ready to take the QUIZ?

7. What is Green Zone Behavior?
   a. Requesting Dates Frequently
   b. Performance Counseling, Polite Concern and Friendly Conversation
   c. Means Don't Do It

8. What is Yellow Zone Behavior? *(More than one answer can be correct!)*
   a. Regarded as inappropriate by most people "Use Caution"
   b. It is O.K. to do it again and again
   c. If yellow zone behavior is brought to the attention of the alleged offender and then repeated, it becomes sexual harassment per DON guidelines

Correct Answer

- **Question 7 = b**

  b. Performance Counseling, Polite Concern and Friendly Conversation

- **Question 8 = a and c**

  a. Regarded as inappropriate by most people “Use Caution”

  c. If yellow zone behavior is brought to the attention of the alleged offender and then repeated, it becomes sexual harassment per DON guidelines

Are you ready to take the QUIZ?

9. What is an example of Yellow Zone Behavior?
    a. Encouragement
    b. Performance Counseling
    c. Violating someone's personal "space"

10. What is Red Zone Behavior?
    a. Always considered sexual harassment
    b. Means 'Stop, don't do it!" Always unacceptable
    c. Asking someone on a date

Correct Answer

- **Question 9 = c**

  c. Violating someone's personal "space"

- **Question 10= a and b**

  a. Always considered sexual harassment
  b. Means 'Stop, don't do it!" Always unacceptable

Are you ready to take the QUIZ?

11. A supervisor advises a poor-performing employee that her performance has been unacceptable. This is a:
    a. Red Zone Behavior
    b. Yellow Zone Behavior
    c. Green Zone Behavior

12. On 25 March 2008, Employee A asked Employee B for a date and Employee B declined it. On 4 April 2007, Employee A asked Employee B for a date. This is a:

    a. Green Zone Behavior
    b. Yellow Zone Behavior – could be considered sexual harassment under DON Guidelines
    c. Red Zone Behavior

Correct Answer

- **Question 11 = c**

  c. Green Zone Behavior

- **Question 12 = b**

  b. Yellow Zone Behavior – could be considered sexual harassment
  under DON Guidelines

Are you ready to take the QUIZ?

13. What action should you take if you believe you are a victim of sexual harassment? *(More than one answer can be correct!)*

    a. Contact your supervisor

    b. Contact your EEO Counselor

    c. Ignore the behavior

    d. Asking or telling the person to stop

Correct Answer

- **Question 13 = a, b, and d**

  a. Contact your supervisor

  b. Contact your EEO Counselor

  d. Asking or telling the person to stop

Example 1

- You receive an e-mail from a co-worker with an attachment – nude picture(s) of male and/or female. You are offended by the picture(s).

- What are your option(s)?

Options, but not limited to….

- Delete the picture
- Notify the sender that you find the email offensive
- Report it

Example 2

- An employee from another department keeps calling you asking you to go out with him or her. You have said no several times and you want him or her to stop asking.

- What will you do?

Options, but not limited to….

- Request a coworker to inform the employee to stop asking you for a date.
- Notify your supervisor
- Notify his or her supervisor
- Call the EEO Office

Example 3

- You work in an office where everyone gets along well with each other and there is lot of mild sexual joking going around. Suddenly you find that the tone and nature of the jokes have become more than you can tolerate.

- What will you do to address this situation?

Options, but not limited to….

- Ask for the behavior to stop
- Report it to your supervisor
- Request training

Example 4

- You notice that your supervisor or coworker stands behind you while you are working and his or her back rubs against you. He or she also asks you to wear suggestive clothing.
- You want this behavior to stop.
- What will you do?

Options, but not limited to….

- Tell the employee/supervisor to stop the behavior
- Notify your second line supervisor
- Contact the EEO Office

No Fear Act:

Notification and Federal Employee Anti-Discrimination and Retaliation Act of 2002

Prepared by:
Naval Office of EEO Complaints Management & Adjudication

Training Module

Overview of No Fear Act

- Title: Notification and Federal Employee Anti-Discrimination and Retaliation Act of 2002 (effective 10/01/03)
- Three titles:
  - Title I – General Provisions
  - Title II – Federal Employee Discrimination and Retaliation
  - Title III – EEO Complaint Data Disclosure

Policy

- **“A Federal agency may not discriminate against an employee or applicant with respect to the terms, conditions or privileges of employment on the basis of race, color, religion, sex, national origin, age, disability, marital status or political affiliation.**

- **Discrimination on these bases is prohibited by one or more of the following statutes: 5 U.S.C. 2302(b) (1), 29 U.S.C. 206(d), 29 U.S.C. 631, 29 U.S.C. 633a, 29 U.S.C. 791 and 42 U.S.C. 2000e-16.**

Purpose of Act

- **The Act requires that "Federal agencies be accountable for violations of antidiscrimination and whistleblower protection laws."**
- **The Act also requires that DON inform current employees, former employees and applicants for employment, of the rights and protections available under Federal antidiscrimination, whistleblower protection and retaliation laws.**

What are Your Rights?

- Existing Rights Unchanged
  - Pursuant to section 205 of the No FEAR Act, neither the Act nor any notice issued in compliance with the Act, creates, expands or reduces any rights otherwise available to any employee, former employee or applicant under the laws of the United States, including the provisions of law specified in 5 U.S.C. 2302(d).

EEO Discrimination Complaint Process

EEO Statutes

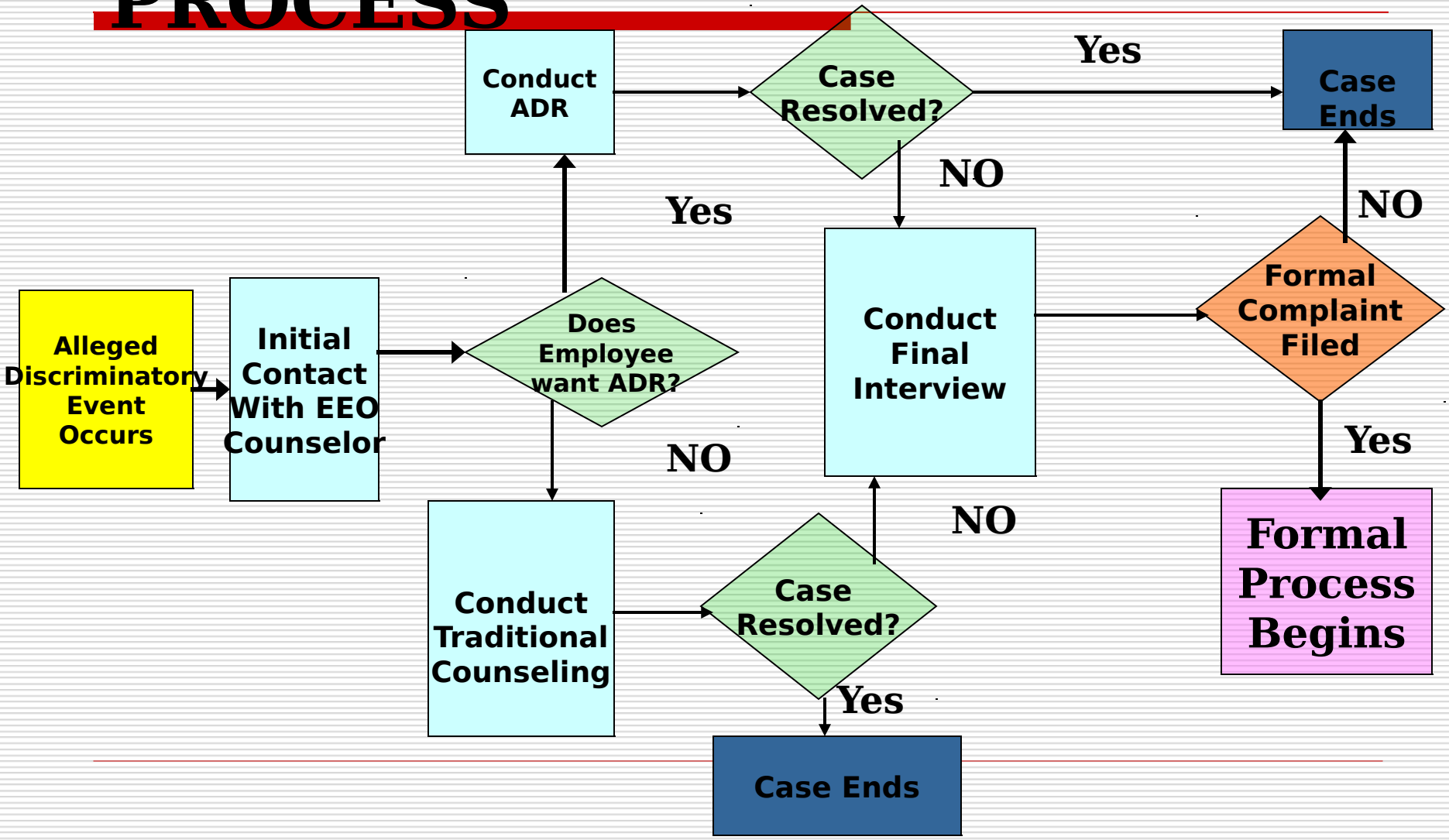
- **Title VII of the Civil Rights Act of 1964**
  - Prohibits discrimination based on race, color, religion, sex, and national origin.
- **Age Discrimination in Employment Act of 1967**
  - Prohibits discrimination of the basis of age (40 years and older).
- **The Rehabilitation Act of 1973**
  - Prohibits discrimination the basis of mental and physical disability.
- **Equal Pay Act of 1963**
  - Prohibits sex-based wage discrimination.

All statutes prohibit reprisal or retaliation against individuals exercising their rights under the statutes.

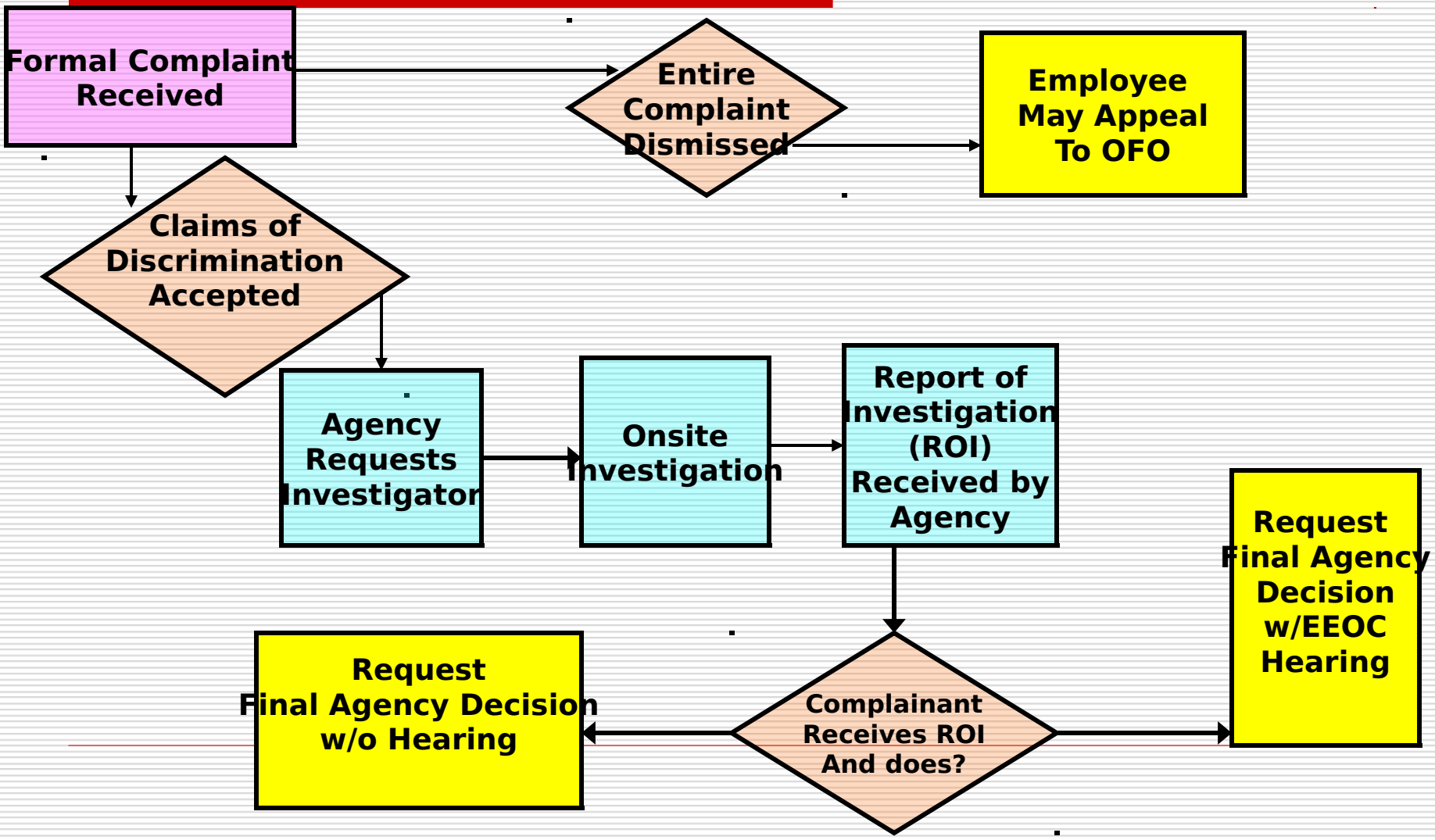
EEO Discrimination Complaints

- If you believe that you have been the victim of unlawful discrimination on the basis of race, color, religion, sex, national origin or disability, you must:
  - Contact an Equal Employment Opportunity (EEO) counselor within 45 calendar days of the alleged discriminatory action; or,
  - In the case of a personnel action, within 45 calendar days of the effective date of the action, before you can file a formal complaint of discrimination with your agency. See, e.g., 29 CFR 1614.
  - Every individual alleging discrimination must first go through the pre-complaint or counseling phase of the DON EEO discrimination complaint process.

PRE-COMPLAINT PROCESS



FORMAL PROCESS


Formal Complaint Received
Entire Complaint Dismissed
Employee May Appeal To OFO
Claims of Discrimination Accepted
Agency Requests Investigator
Onsite Investigation
Report of Investigation (ROI) Received by Agency
Request Final Agency Decision w/EEOC Hearing
Request Final Agency Decision w/o Hearing
Complainant Receives ROI And does?

Other Circumstances

- **If you believe that you have been the victim of unlawful discrimination on the basis of age, you may either contact an EEO counselor as noted above or give notice of intent to sue to the Equal Employment Opportunity Commission (EEOC) within 180 days of the alleged discriminatory action.**

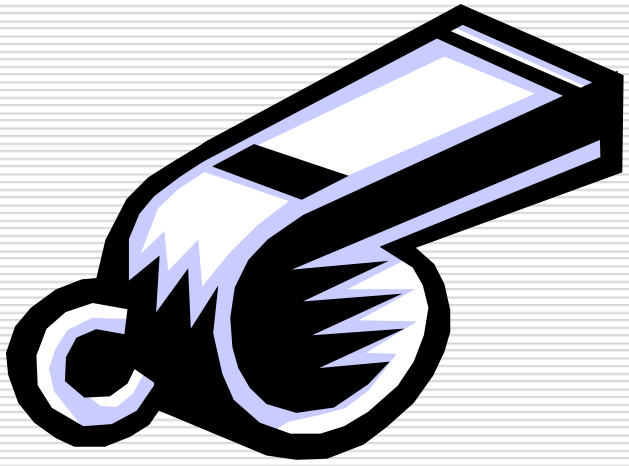
- **If you are alleging discrimination based on marital status or political affiliation, you may file a written complaint with the U.S. Office of Special Counsel (OSC). In the alternative (or in some cases, in addition), you may pursue a discrimination complaint by filing a grievance through your agency's administrative or negotiated grievance procedures, if such procedures apply and are available.**

Who Do You Contact?

- **Local EEO Office**
  - Contact information can be found on official bulletin board.

- **Office of Special Counsel**
  - U.S. Office of Special Counsel at 1730 M Street NW., Suite 218, Washington, DC 20036-4505 or online through the OSC Web site — http://www.osc.gov

Whistleblower Protection Act



Whistleblower Protection Laws

- **A Federal employee with authority to take, direct others to take, recommend or approve any personnel action must not use that authority to take or fail to take, or threaten to take or fail to take, a personnel action against an employee or applicant because of disclosure of information by that individual that is reasonably believed to evidence:**
  - violations of law, rule or regulation;
  - gross mismanagement;
  - gross waste of funds;
  - an abuse of authority;
  - or a substantial and specific danger to public health or safety,

- **Unless disclosure of such information is specifically prohibited by law and such information is specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs.**

- **Retaliation against an employee or applicant for making a protected disclosure is prohibited by 5 U.S.C. 2302(b)(8). If you believe that you have been the victim of whistleblower retaliation, you may file a written complaint (Form OSC-11) with the U.S. Office of Special Counsel at 1730 M Street NW., Suite 218, Washington, DC 20036-4505 or online through the OSC Web site: http://www.osc.gov.**

Examples of Protected Whistleblower Disclosures

- **Violation of Law, Rule or Regulation**
- **Substantial and specific danger to public health or safety**
- Gross Waste of Funds
  - More than a debatable expenditure.
- **Gross Mismanagement**
  - An action that creates a risk of significant adverse impact on the accomplishment of an Agency's mission.
- **Abuse of Authority**
  - An arbitrary or capricious exercise of power that injures another, or benefits the abuser or others.

Whistleblower Disclosures

- **No Requirement that employee go through Chain of Command.**
- **Whistleblower's personal motivation does not affect reasonableness of a disclosure.**
- **Employee or applicant is protected if employer mistakenly believes he or she is a whistleblower.**
- **Disclosure is not protected (unless made to the Special Counsel or Inspector General), where the disclosure is:**
  - Prohibited by law, or
  - Required by Executive Order to be secret for National Security or Foreign Affairs reasons.

Office of Special Counsel Role in Whistleblower Protection

- **The Office of Special Counsel (OSC) provides a secure channel through which current and former federal employees and applicants may make confidential disclosures.**
- **OSC evaluates the disclosures to determine whether there is a substantial likelihood that one of the conditions listed above has been disclosed.**
- **If such a determination is made, OSC has the authority to require the head of the agency to investigate the matter.**
- **To make a disclosure contact:**

U.S. Office of Special Counsel
1730 M Street, N.W., Suite 218
Washington, DC 20036-4505

Phone: (202) 254-3640

Toll Free: 1-800-572-2249

Hearing and Speech Disabled: Federal Relay Service 1-800-877-8339

Responsibilities

- **Agency Heads, and officials with delegated personnel management authority are responsible for:**
  - Preventing prohibited personnel practices.
  - Complying with and enforcing civil service laws, rules and regulations
  - Ensuring that employees are informed of their rights and remedies.

Merit Systems Principles

- Recruit, select, and advance on the basis of merit after fair and open competition
- Treat employees and applicants fairly and equitably
- Provide equal pay for equal work; reward excellent performance
- Maintain high standards of integrity, conduct and concern for the public interest.
- Use human resources effectively and efficiently
- Retain or separate employees on the basis of their performance.
- Provide employees with effective training and education
- Protect employees from reprisal for lawful disclosures.

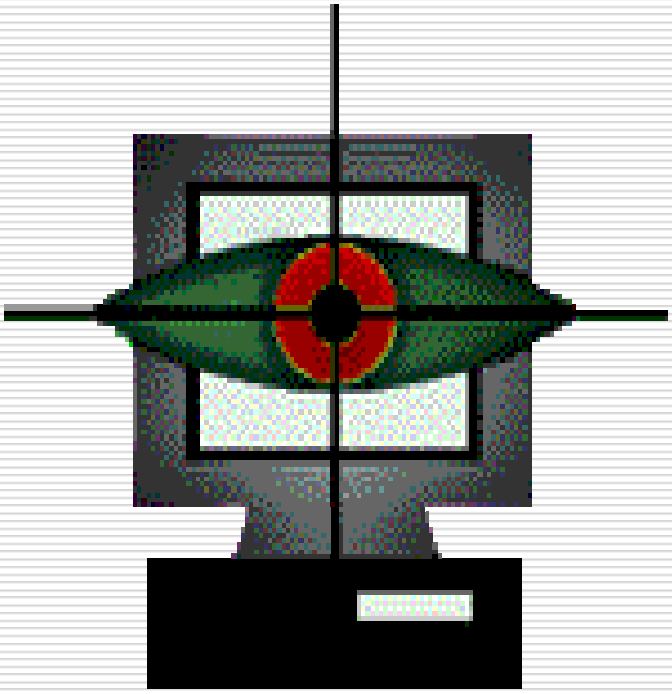
12 Prohibited Personnel Practices

- **Generally stated, § 2302(b) provides that a federal employee authorized to take, direct others to take, recommend or approve any personnel action may *not*:**
  - Discriminate against an employee or applicant based on race, color, religion, sex, national origin, age, handicapping condition, marital status, or political affiliation;
  - Solicit or consider employment recommendations based on factors other than personal knowledge or records of job-related abilities or characteristics;
  - Coerce the political activity of any person;
  - Deceive or willfully obstruct anyone from competing for employment;
  - Influence anyone to withdraw from competition for any position so as to improve or injure the employment prospects of any other person;
  - Give an unauthorized preference or advantage to anyone so as to improve or injure the employment prospects of any particular employee or applicant;
  - Engage in nepotism (*i.e.*, hire, promote, or advocate the hiring or promotion of relatives);

12 Prohibited Personnel Practices

- **Continued:**
  - Engage in reprisal for whistleblowing
  - Take, fail to take, or threaten to take or fail to take a personnel action against an employee or applicant for exercising an appeal, complaint, or grievance right; testifying for or assisting another in exercising such a right; cooperating with or disclosing information to the Special Counsel or to an Inspector General; or refusing to obey an order that would require the individual to violate a law;
  - Discriminate based on personal conduct which is not adverse to the on-the-job performance of an employee, applicant, or others; or
  - Take or fail to take, recommend, or approve a personnel action if taking or failing to take such an action would violate a veterans' preference requirement; and
  - Take or fail to take a personnel action, if taking or failing to take action would violate any law, rule or regulation implementing or directly concerning merit system principles at 5 U.S.C. § 2301.

Freedom from Reprisal



Retaliation for Engaging in Protected Activity

- **A Federal agency may not retaliate against an employee or applicant because that individual exercises his or her rights under any of the Federal antidiscrimination or whistleblower protections laws listed above.**
- **If you believe that you are the victim of retaliation for engaging in protected activity, you must follow, as appropriate, the procedures described in the Antidiscrimination Laws and Whistleblower Protection Laws sections or, if applicable, the administrative or negotiated grievance procedures in order to pursue any legal remedy.**

Applicable Regulations

- **<u>29 C.F.R. §1614.101(b) states</u>**:

  "No person shall be subjected to retaliation for opposing any practice made unlawful by Title VII of the Civil Rights Act, the Age Discrimination in Employment Act (ADEA), the Equal Pay Act (EPA),or the Rehabilitation Act (Rehab Act), or for participating in any stage of the administrative or judicial proceedings under those statutes."

Elements of Reprisal Claim

- **First Element**:
  - Individual expressed opposition to discriminatory practice; or,
  - Individual participated in the discrimination complaint process
- **Second Element**:
  - Agency (Management) aware of protected activity.
  - The individual who the complainant alleges retaliated against them must have knowledge of their protected activity.
- **Third Element**:
  - Agency must have taken an adverse action after the complainant engaged in the protected activity
  - Examples of Adverse Action: Denial of promotion, award, position; disciplinary action; negative evaluation or, harassment.
- **Fourth Element**:
  - Complainant must demonstrate a “Causal Connection” between the adverse action and the protected activity.

Protected Activity: Opposition to Discriminatory Practice

- **Opposition to a discriminatory practice .**
  - The anti-retaliation provisions make it unlawful to discriminate against an individual because s/he has opposed any practice made unlawful by Title VII, the ADEA, the EPA, or the Rehab Act.
  - A complaint amounts to protected opposition only if the individual explicitly or implicitly communicates a belief that the practice constitutes unlawful employment discrimination.
  - The opposition clause does not require the person be correct in their belief that the agency's employment practice they opposed actually violated Title VII, the ADEA, the EPA, and/or the Rehab Act.
  - The opposition clause protects the individual provided that they had a good faith and reasonable belief that a violation of the EEO statutes had or was occurring.

Protected Activity: Participation in the EEO Process

- **Participating in the EEO process**.
  - Title VII, the ADEA, the EPA, and the Rehab Act make it unlawful to discriminate against any individual because s/he has filed a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, hearing, or litigation under any of the anti-discrimination statutes.
  - While the opposition clause applies only to those who protest practices that they reasonably and in good faith believe are unlawful, the participation clause applies to all individuals who participate in the EEO complaints process.
  - An agency can be found liable for retaliating against an individual for filing an EEO complaint regardless of the merits or reasonableness of the original complaint.

Disciplinary Actions

- **Under the existing laws, each agency retains the right, where appropriate, to discipline a Federal employee who has engaged in discriminatory or retaliatory conduct, up to and including removal.**

- **If OSC has initiated an investigation under 5 U.S.C. 1214, however, according to 5 U.S.C. 1214(f), agencies must seek approval from the Special Counsel to discipline employees for, among other activities, engaging in prohibited retaliation.**

- **Nothing in the No FEAR Act alters existing laws or permits an agency to take unfounded disciplinary action against a Federal employee or to violate the procedural rights of a Federal employee who has been accused of discrimination.**

Additional Information

- **For further information regarding the No FEAR Act regulations refer to:**
  - 5 CFR 724
  - Servicing EEO Office
  - Website: https://www.donhr.navy.mil/NoFearAct.asp.

- **Additional information regarding Federal antidiscrimination, whistleblower protection and retaliation laws can be found at:**
  - EEOC Website: http://www.eeoc.gov
  - OSC Website: http://www.osc.gov

EEO POINTS OF CONTACT

- **REGIONAL EEO PROGRAM OFFICE**
  - DEPUTY EEO OFFICER (760) 725-4301 (DSN: 365)
- **COMMAND EEO OFFICES**
  - Marine Forces Pacific (808) 257-2120 (DSN: 94-315-457)
  - MCB Hawaii (808) 257-2120 (DSN: 94-315-457)
  - Marine Corps Installations-West (858) 577-1120 (DSN: 267)
  - MCAGCC Twentynine Palms (760) 830-7370 (DSN: 230)
  - MCB Camp Pendleton (760) 725-3845 (DSN: 365)

EEO POINTS OF CONTACT

- MCAS Camp Pendleton (858) 577-1120 (DSN: 267)
- MCAS Miramar (858) 577-1120 (DSN: 267)
- MCAS Yuma 760) 725-4301 (DSN: 365)
- MCLB Barstow (760) 577-6599/6022 (DSN: 282)
- MWTC Bridgeport (760) 830-7370 (DSN: 230)
- MCRD San Diego (760) 725-9810 (DSN: 365)
- MCTSSA (760) 725-3845 (DSN: 365)
- Naval Hospital Twentynine Palms (760) 830-7370 (DSN: 230)
- BMC, China Lake (760) 830-7370 (DSN: 230)

POSH and No Fear Act 2002 Training Certificate

This Certifies that

Name

Unit/Base: _____

Completed the POSH and No Fear Act Training and Quiz

on Date: _____

Please send this certificate to your EEO